REMARKS

This is in response to the non-final Official Action currently outstanding with respect to the above-identified application.

Claims 1-19 were originally presented in this application. Claims 9-12, 16 and 17 were withdrawn from further consideration earlier in the prosecution as being directed to a non-elected species. Claims 16 and 17 were rejoined in the Advisory Action of December 23, 2003. Claims 9-15 were canceled, and Claims 20-26 were added by the Amendment accompanying Applicant's Request for Continued Prosecution. By the foregoing Amendment, Claim 20 has been amended. No claims have been added and no claims have been canceled. No new matter has been added. Accordingly, upon the entry of the foregoing Amendment, Claims 1-8, and 16-26 will constitute the claims under active prosecution in this application.

A version of the claims as they will stand upon the entry of the foregoing Amendment is set forth above as required by the Rules.

More specifically, it is noted that without repeating his acknowledgement of Applicant's claim for priority and the receipt by the United States Patent and Trademark Office of the required certified copy of the priority documents, the Examiner has:

1. Again has failed to indicate whether or not the drawings attached to the present specification have been found to be acceptable. Note that the Advisory Action of December 23, 2003 indicates that a drawing change of

February 27, 2002 is approved, but does not indicate that the drawings as filed are approved (no drawing change has been filed in this application). **An indication concerning the acceptability of the drawings currently on file in response to this communication therefore is respectfully requested to clarify the record.**

2. Indicated that Claims 1-8 and 16-19 are allowed.

3. Rejected Claims 20-26 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly state the subject matter which Applicant regards as the invention;

4. Rejected Claims 20-26 under 35 USC 103(a) as being unpatentable over the Gray reference (U.S. Patent 2,017,5345) or the Remo Aeronautical Corp. reference (French Patent 679,141), in view of the Daryshire reference (U.S. Patent No. 6,685,137); and

5. Cited the Charron reference (US Patent 6,659,397 as being pertinent to Applicant's disclosure, but failed to apply that reference against any of the presently pending claims of this application.

Further comment in these Remarks regarding items 1-2 and 5 above is not considered to be necessary in these Remarks.

With respect to item 3, The Examiner has suggested that the term "center of gravity" that appears at the second line from the bottom of Claim 20 lacks appropriate antecedent basis. In response to this rejection, Applicant has now amended line 2 of Claim 20 so as to read "a flying body <u>having a center of gravity, said flaying body</u> including".

Applicant respectfully submits that this amendment removes the basis for the Examiner's rejections under 35 USC 112, second paragraph. A decision so holding and withdrawing the currently outstanding rejections under 35 USC 112, second paragraph, in response to this communication is respectfully requested.

With respect to item 5, Applicant now has amended Claim 20 so as to specify that "the moving apparatus controls both of at least one of fluttering frequency and fluttering angle and the relationship between the position of the center of gravity thereof and the plane of fluttering motion". This amendment is specifically supported in the present specification at page 17, lines 5-12 and at page 20, line 24 to page 21, line 5.

In order to establish a *prima facie* case supporting a rejection based upon 35 USC 103(a), the Examiner is required to satisfy the following standards:

> To establish a *prima facie* case of obviousness under Section 103, Title 35 United States Code (35 US §103), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2D 1438 (Fed. Cir. 1991).

Applicant respectfully submits that nowhere within the "four corners" of the cited art relied upon by the Examiner is it disclosed, taught or suggested that the moving apparatus controls both at least one of fluttering frequency and fluttering angle ***and*** the relationship between the position of the center of gravity and the plane of fluttering motion. Accordingly, Applicant respectfully submits that Claim 20 as hereinabove amended and Claims 21-26 that depend therefrom have not been, and cannot be, shown to be unpatentable over the combination of art currently relied upon by the Examiner.

Accordingly, in view of the foregoing Amendment and Remarks, reconsideration and allowance of this application in response to this communication is respectfully requested.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

Date: June 29, 2004

David A. Tucker
SIGNATURE OF PRACTITIONER

Reg. No. 27,840

David A. Tucker
(type or print name of practitioner)
Attorney for Applicant

Edwards & Angell, LLP
Tel. No. (617) 517-5508
P. O. Box 55874
P.O. Address

Customer No. 21874
Boston, MA 02205

449598